

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
ENTERED

MAR 19 2008

GUALBERTO HUERTA, ET AL.,

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Michael N. Milby, Clerk of Court
By Deputy Clerk *Graciela*

Plaintiffs,

v.

CIVIL ACTION NO. B-07-39

CARLOS GARCIA, ET AL.,

Defendants.

OPINION & ORDER

BE IT REMEMBERED that on March 19, 2008, the Court **DENIED** the Plaintiffs Gualberto Huerta and Gualberto Huerta Jr.'s Motion to Declare this Case a Default Based on the Following Facts and Reasons. Dkt. No. 57. Plaintiffs have provided this Court with evidence that a summons and the complaint was sent by certified mail, return receipt requested to Defendants Jill Williams, Daniel Garcia, Sharon Moore, Lynn Black, Oscar Garcia, and Cesario Pedraza. Dkt. No. 41. Plaintiffs provided five return receipts signed by a person other than the Defendant to whom the mail was addressed. *Id.* The rule for service by certified mail contemplates personal service, or service on someone authorized to accept service of process for a defendant. Without showing that the summons and complaint have been so served, the Plaintiffs have not carried their burden of proof of proper service before moving for default judgment. Therefore, Plaintiffs' Motion to Declare this Case a Default Based on the Following Facts and Reasons, Dkt. No. 57, is **DENIED**. Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure this Court **GRANTS** Plaintiffs thirty (30) days from the date of this Order to properly serve Defendants.

DONE at Brownsville, Texas, on March 19, 2008.

Hilda G. Tagle
Hilda G. Tagle
United States District Judge